

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
CLAYTON HOWARD,

Plaintiff,

-against-

MEMORANDUM & ORDER
24-CV-3291 (PKC) (JRC)

STATE OF NEW YORK, CITY OF NEW YORK,
RICHMOND COUNTY DISTRICT ATTORNEY'S
OFFICE, DARREN ALBANESE, GABRIELLA
GIOVINAZZO, ALVA PRENGA, COURTNEY
CHASE, MCKENZIE UPSHAW, ALBERT
CRAWFORD, and LISA THOMPSON,

Defendants.

-----X
PAMELA K. CHEN, United States District Judge:

Plaintiff Clayton Howard brings this action *pro se*. (*See generally* Compl., Dkt. 1.) He has also filed an application to proceed *in forma pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a). (Short Form IFP App. ("IFP App."), Dkt. 2.) For the reasons discussed below, Plaintiff's application to proceed *in forma pauperis* is denied. To proceed with this action, Plaintiff is granted until July 11, 2024, to either file a Long Form IFP application or to pay the \$405 filing fee.

The purpose of the statute permitting litigants to proceed IFP is to ensure that indigent persons have equal access to the judicial system. *Davis v. N.Y.C. Dep't of Educ.*, No. 10-CV-3812, 2010 WL 3419671, at *1 (E.D.N.Y. Aug. 27, 2010) (citing *Gregory v. N.Y.C. Health & Hosps. Corp.*, No. 07-CV-1531, 2007 WL 1199010, at *1 (E.D.N.Y. Apr. 17, 2007)); *Cuoco v. U.S. Bureau of Prisons*, 328 F. Supp. 2d 463, 467 (S.D.N.Y. 2004). A plaintiff seeking to proceed IFP must submit an affidavit stating, "that the person is unable to pay" filing fees and must also include "a statement of all assets" the person possesses. 28 U.S.C. § 1915(a)(1). Section 1915

authorizes a court to dismiss a case brought by a plaintiff requesting to proceed IFP if the “allegation of poverty is untrue.” *Id.* § 1915(e)(2)(A). Courts in this district apply this provision when a litigant’s statement of assets fails to establish the level of poverty required under the IFP statute. *See, e.g., Miller v. Smith*, No. 21-CV-2949, 2021 WL 2894973, at *2 (E.D.N.Y. June 2, 2021); *Humphrey v. U.S. Army Corps of Eng’rs*, No. 21-CV-1901, 2021 WL 1837791, at *1 (E.D.N.Y. May 7, 2021).

The question of whether a plaintiff qualifies for IFP status is within the discretion of the district court. *Grimes v. Sil*, No. 19-CV-1066, 2019 WL 981639, at *1 (E.D.N.Y. Feb. 27, 2019). “‘If it appears that an applicant’s ‘access to [] court has not been blocked by his financial condition; rather [that] he is ‘merely in the position of having to weigh the financial constraints posed if he pursues [his position] against the merits of his case,’” then a court may exercise its discretion to deny the application. *Brooks v. Aiden 0821 Capital LLC*, No. 19-CV-6823, 2020 WL 4614323, at *5 (E.D.N.Y. July 22, 2020) (quoting *Fridman v. City of N.Y.*, 195 F. Supp. 2d 534, 537 (S.D.N.Y. 2002)).

Plaintiff states that he is self-employed, earns \$1,500.00 bi-weekly (after taxes), and has \$100.00 in a checking or savings account. IFP App. ¶¶ 2–4. Monthly, Plaintiff pays \$1,200 for rent, \$200 for phone and Wi-Fi service, \$90 for gas, \$100 for food, \$267 for a car payment, \$150 for insurance, and \$200 to support his minor daughter. *Id.* ¶¶ 6–7. Based on this information, the Court is not satisfied that Plaintiff is unable to pay the \$405.00 filing fee to bring this action.

CONCLUSION

Accordingly, Plaintiff’s IFP application is denied. In order to proceed with this action, Plaintiff is granted until July 11, 2024, either to file a Long Form IFP application providing

additional information about his financial assets or to pay the \$405 filing fee.

The Clerk of Court is directed to send a Long Form IFP application to Plaintiff along with this Order. All further proceedings in this case shall be stayed.

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal would not be taken in good faith and therefore *in forma pauperis* status is denied for the purpose of any appeal. *Coppedge v. United States*, 369 U.S. 438, 444–45 (1962).

SO ORDERED.

/s/ Pamela K. Chen
PAMELA K. CHEN
United States District Judge

Dated: June 11, 2024
Brooklyn, New York